Supreme Court, U.S.
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No. 91-1376

In the Supreme Court of the United States

OCTOBER TERM, 1991

CHURCH OF SCIENTOLOGY INTERNATIONAL, ET AL.,
PETITIONERS

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

BRIAN C. GRIFFIN
Deputy Assistant Attorney General

BRUCE R. ELLISEN
PATRICIA M. BOWMAN
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether the court of appeals properly denied the petition for a writ of mandamus seeking recusal of the trial judge pursuant to 28 U.S.C. 455(a).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-3a) and the opinion of the district court (Pet. App. 4a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 4, 1991. An order denying the petition for rehearing was entered on January 30, 1992 (Pet. App. 1a). The petition for a writ of certiorari was filed on February 25, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners are various components of the Church of Scientology that are involved in litigation in several cases in the United States District Court for the Central District of California. Each of these cases is assigned to United States District Judge James M. Ideman (Pet. 2). Petitioners filed motions in these cases to recuse Judge Ideman (Pet. App. 4a). In support of the motions, petitioners alleged that a framed cover of the May 6, 1991, edition of *Time* magazine—which describes the Church of Scientology as "The Cult of Greed"—was seen hanging on the wall of the work space of Judge Idleman's staff (Pet. 4). Petitioners claim that this creates an appearance of partiality that requires the recusal of Judge Ideman (Pet. 3).

In one of the cases, petitioners seek to enjoin the government from collecting taxes and seek damages for the alleged unlawful collection of taxes and for the alleged unlawful disclosure of return information. *Church of Scientology of California* v. *United States of America, Sandra Baker, et al.*, No. CV 90-2042 (JMI). The defendants named in that case were the United States of America and four Internal Revenue Service employees. Petitioners alleged that Judge Ideman should be recused in this case for the additional reason that one of the individual defendants (IRS Assistant District Counsel Charles Jeglikowski) had been posted from 1973 to 1976 with Judge Ideman at the 78th Military Law Center in San Pedro, California. The evidence reflected that, during that three-year period, the Jeglikowskis and the Idemans attended "one or two" social functions together (Pet. 9).

2. Pursuant to local rule, Judge Ideman referred the recusal motions to another judge—United States District Judge Letts—who, after a hearing, denied the motions (Pet. App. 4a). Judge Letts concluded that it was inappropriate to draw any inference as to Judge Ideman's state of mind simply because the cover of *Time* magazine hung in the staff area of his chambers (Pet. App. 15a-16a). The court noted that the case has generated a great deal of work for Judge Ideman and his staff (Pet. App. 10a-11a):

> [A] case that has generated, I presume, a lot of attention and a lot of work in that office, made its way to the cover of *Time* magazine, and somebody undertook to take that cover and put it on the wall.
>
> * * * * *
>
> I don't think you can infer from *Time* magazine, which is independent, * * * evidence of any state of mind for anybody that chose to hang it there. I simply don't believe that, so I don't credit it for that.

The court also rejected as irrelevant any prior relationship asserted to exist between Judge Ideman and one of the defendants (Pet. App. 14a).

3. The court of appeals held that the district court's findings were not clearly erroneous and denied the petition for writ of mandamus (Pet. App. 2a-3a). The court further observed that the harm, if any, alleged by petitioners is correctable on appeal, if necessary (*ibid.*).

ARGUMENT

The court of appeals properly denied the petition for a writ of mandamus. The decision of the court of appeals does not conflict with the decisions of this Court or of any other court of appeals. Further review is therefore not warranted.

1. A federal judge is to recuse himself, either on his own motion or on the motion of a party, in any proceeding in which his impartiality might reasonably be questioned. 28 U.S.C. 455(a). The statute does not specifically provide for appellate review of rulings on a motion for recusal. Courts have held, however, that mandamus review of recusal motions is available because "[P]ublic confidence in the courts [requires] that such a question be disposed of at the earliest possible opportunity." *In re United States*, 666 F.2d 690, 694 (1st Cir. 1981) (quoting *In re Union Leader Corp.*, 292 F.2d 381, 384 (1st Cir.), cert. denied, 368 U.S. 927 (1961)). See *In re Aetna Casualty & Surety Co.*, 919 F.2d 1136, 1143 (6th Cir. 1990) (en banc); *Moody* v. *Simmons*, 858 F.2d 137 (3d Cir. 1988), cert. denied, 489 U.S. 1078 (1989); *Union Carbide Corp.* v. *U.S. Cutting Service, Inc.*, 782 F.2d 710, 712-713 (7th Cir. 1986); *In re City of Houston*, 745 F.2d 925, 927 (5th Cir. 1984); *In re Cement Antitrust Litigation*, 673 F.2d 1020, 1025 (9th Cir. 1982); *In re International Business Machines Corp.*, 618 F.2d 923, 926-927 (2d Cir. 1980); *Bell* v. *Chandler*, 569 F.2d 556, 559 (10th Cir. 1978); *In re Rodgers*, 537 F.2d 1196, 1197 n.1 (4th Cir. 1976) (per curiam). See also *In re Cement Antitrust Litigation*, 688 F.2d 1297, 1301 (9th Cir. 1982),

affirmed for lack of a quorum pursuant to 28 U.S.C. 2109, 459 U.S. 1191 (1983).[1]

The principles governing the use of mandamus are summarized in *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U.S. 271, 289 (1988):

> This Court repeatedly has observed that the writ of mandamus is an extraordinary remedy, to be reserved for extraordinary situations. See, *e.g.*, *Kerr* v. *United States District Court*, 426 U.S. 394, 402 (1976). The federal courts traditionally have used the writ only "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche* v. *Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943). In accord with this historic practice, we have held that only "exceptional circumstances amounting to a judicial 'usurpation of power'" will justify issuance of the writ. *Will* v. *United States*, 389 U.S. 90, 95 (1967), quoting *De Beers Consol. Mines, Ltd.* v. *United States*, 325 U.S. 212, 217 (1945). Moreover, we have held that

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[1] In *In re Cement Antitrust Litigation*, the Ninth Circuit reviewed on a petition for a writ of mandamus a district court order granting recusal. See 688 F.2d at 1299. Based on that opinion, petitioners erroneously assert (Pet. 14-15) that the Ninth Circuit will not review, on a petition for a writ of mandamus, an order of the district court *denying* a recusal request because that order would be fully reviewable on appeal. In *In re Cement Antitrust Litigation*, however, the court merely discussed the availability of post-judgment review as one of five relevant factors in determining whether mandamus is appropriate. The court did not conclude that the ability to allege error on appeal precluded mandamus relief. See 688 F.2d at 1301 ("the guidelines serve only as a useful starting point, an analytic framework for determinations regarding the propriety of mandamus relief").

> the party seeking mandamus has the "burden of showing that its right to issuance of the writ is 'clear and indisputable.' " *Bankers Life & Cas. Co.* v. *Holland*, 346 U.S. 379, 384 (1953), quoting *United States* v. *Duell*, 172 U.S. 576, 582 (1899).

A recusal motion under Section 455 is, correspondingly, committed to the sound discretion of the district court. *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988), cert. denied, 490 U.S. 1102 (1989); *Sewer Alert Committee* v. *Pierce County*, 791 F.2d 796, 798 (9th Cir. 1986); *Hinman* v. *Rogers*, 831 F.2d 937, 939 (10th Cir. 1987); *United States* v. *Haldeman*, 559 F.2d 31, 139 n.359 (D.C. Cir. 1976), cert. denied, 431 U.S. 933 (1977). See also S. Rep. No. 419, 93d Cong., 1st Sess. 5 (1973); H.R. Rep. No. 1453, 93d Cong., 2d Sess. 5 (1974). In ruling on a petition for writ of mandamus, the court of appeals is to determine whether the district court abused its discretion in denying the motion to recuse. *In re Drexel Burnham Lambert Inc.*, 861 F.2d at 1312; *In re United States*, 666 F.2d 695 (1st Cir. 1981). See also *Kerr* v. *United States District Court*, 426 U.S. 394, 403 (1976). The test under 28 U.S.C. 455(a) is an objective one: whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality. *Lilijeberg* v. *Health Services Acquisition Corp.*, 486 U.S. 847, 861 (1988); *Sewer Alert Committee* v. *Pierce County*, 791 F.2d at 798; *United States* v. *Greenough*, 782 F.2d 1556, 1558 (11th Cir. 1986) (per curiam). As a result, the issue presented is ultimately a factual one: whether the proper inference to be drawn from the alleged facts is that the impartiality of the trial judge is reasonably in doubt.

2. In implementing this general legal standard, courts have employed a variety of phrases to describe the same conclusion. Some have stated that the petitioner must show a clear and indisputable right to relief. See, *e.g.*, *In re Drexel Burnham Lambert Inc.*, 861 F.2d at 1312; *In re United States*, 666 F.2d at 695. Other courts have stated that the petitioner must establish that the district court abused its discretion in ruling on the recusal motion. See, *e.g.*, *In re Aetna Casualty & Surety Co.*, 919 F.2d at 1143; *Moody* v. *Simmons*, 858 F.2d at 142. These differences in phrasing of the appropriate standard for review do not result in differences in the objective or the substance of that review.

Moreover, when (as here) the petition for writ of mandamus raises only questions of fact, the findings of the district court are properly reviewed by the court of appeals under the familiar "clearly erroneous" standard. In this case, the question for review was whether an appearance of partiality was raised by (i) the fact that the *Time* magazine cover relating to the Church of Scientology was on the wall of the work space of Judge Ideman's staff and (ii) the fact that almost 20 years ago IRS Assistant District Counsel Jeglikowski and Judge Ideman were both posted in the 78th Military Law Center in San Pedro, California, during which time they attended "one or two" social functions together (Pet. 9). After a hearing before United States District Judge Letts, the court resolved these inherently factual issues against petitioners. The court determined that a reasonable person could not draw any inference from the mere existence of the *Time* magazine cover in the

staff's work area (Pet. App. 16a)[2] and also rejected as irrelevant the prior, slight relationship, occurring many years ago, between the judge and defendant Jeglikowski (Pet. App. 14a). The court of appeals properly reviewed the district court's findings for clear error. In this situation, "[t]he appellate court * * * must ask itself not whether it would have decided as did the trial court, but whether that decision cannot be defended as a rational conclusion supported by reasonable reading of the record." *In re United States*, 666 F.2d at 695. See also *In re Drexel Burnham Lambert Inc.*, 861 F.2d at 1312; *In re City of Houston*, 745 F.2d at 927.[3] The fact bound question whether the district court findings were clearly erroneous does not warrant further review.

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[2] Petitioners assert (Pet. 27-29) that the district court inquired only into whether Judge Ideman had "a personal bias or prejudice concerning a party" (28 U.S.C. 455(b)(1)) and erred in not determining whether "his impartiality might reasonably be questioned" (28 U.S.C. 455(a)). The district court, however, stated, "I still don't think you can draw any inference from [the magazine cover] as to Judge Ideman's state of mind" (Pet. App. 16a). The court thus found that Judge Ideman's impartiality could not reasonably be questioned because a reasonable person would not draw an inference of partiality from these facts.

[3] Petitioners offer no support for the proposition (Pet. 24-27) that the court of appeals should determine *de novo* the proper inference to be drawn from the alleged facts. Although petitioners cite numerous cases in which courts of appeals have reviewed denials of recusal motions (Pet. 16-20), none of those cases holds that the district court's factual findings are to be reviewed *de novo*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

BRIAN C. GRIFFIN
Deputy Assistant Attorney General

BRUCE R. ELLISEN
PATRICIA M. BOWMAN
Attorneys

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